

**BEFORE SH.R.S RAI, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No.ADC No.1239/2019

Dated of Institution: 13.06.2019

Date of Order: 29.08.2025

Sunil Kumar, R/o Flat No.G2-501, Maya Garden City,
Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali),
Punjab Pin Code 140603.

.....Complainant

Versus

Barnala Builders And Property Consultants, SCO -1, Opposite
Yes Bank, Patiala Highway, Zirakpur, District Sahibzada Ajit
Singh Nagar (Mohali), Punjab, Pin Code 140603.

.....Respondent

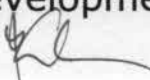
Complaint under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

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Present: Mr.Kulwinder Singh Advocate, for the complainant.
Mr. Amritpal Singh Sandhu Advocate, for the
respondent.

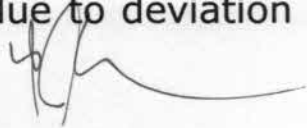
ORDER

Present complaint has been filed by the
complainant, under Section 31 of the Real Estate
(Regulation and Development) Act, 2016 (hereinafter
referred to as the Act) read with Rule 37 of the Punjab State
Real Estate (Regulation and Development) Rules 2017,

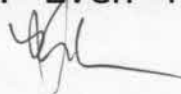


(hereinafter called as the Rules) against the respondent, seeking compensation and litigation expenses.

2. Brief facts of the case are that the complainant booked a flat of 3BHK on 19.01.2013 for a total sale consideration of Rs.54,50,000/- in the project launched by the respondent, namely Maya Garden City at Zirakpur Ambala Highway, Zirakpur, Apartment No.501, Block G2, 4th Floor and paid total amount of Rs.54,43,405/- including EDC and IDC charges. The respondent allured at the time of booking of flat, to provide fully gated city with all amenities such as intercom facilities, broadband, 100% back up power supply, green areas, road open spaces, earth quake resistant structure, anti skid tiles, flush door and mosaic door and overhead water tank for external water supply. But the respondent failed to provide the said amenities. Further, it is submitted that respondent was liable to provide club housing facilities like Swimming Pool, Health Club, Yoga Centre, Library, Community Hall, Carom Room, Pool/Billiards Room, Table Tennis. But failed to provide all such facilities. But he assured to provide 5 split ACs in the Flat, but instead of providing 5 ACs, respondent provided 4ACs only. That material used in the construction of flats, was of low quality, dampness reoccurred in the flat even after repairs. That respondent also failed to get completion/ occupation certificate due to deviation in plan



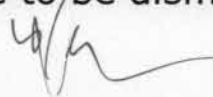
and the possession delivered to complainant alongwith other members of the flats, is without completion/occupation certificate, which is illegal and deemed no possession in the eyes of law. That charging the maintenance fee from complainant is illegal. That there was no agreement by and between the respondent and complainant with regard to the said flat, except allotment letter issued by the respondent and respondent did not disclose date of delivery of the possession of the flat which is itself a deficiency on the part of the respondent. The respondent had violated the provisions of PAPRA Act 1995 as well as RERA Act 2016, by not disclosing the date of delivery of possession of the flat. Respondent accepted 25% and 10% payment of the flat respectively, without signing the agreement. Further, it is averred that as per allotment letter dated 19.01.2013, total area of the flat to be handed over was 1852 square feet, but respondent had handed over the area 1247.90 square feet only, which is 604.1 square feet less than the allotted area. That the respondent had usurped the amount of Rs.18,51,566/- for the area which is not handed over to the complainant. Complainant had visited many a time the respondent and also served a legal notice dated 23.03.2017 upon it, but no amenities as assured by the respondent, were provided. Even respondent has



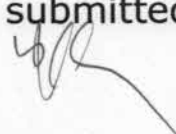
failed to send reply of the said legal notice dated 23.07.2019. Lastly, complainant prayed for seeking direction to respondent to pay compensation(s) as under:-

- a. To pay Rs.4.98 lacs as per valuation report.
- b. To pay Rs.18,51,566/- for the area 604.1 square feet which was not delivered to the complainant.
- c. To pay compensation of Rs.10,00,000/- for causing mental agony, harassment and humiliation.
- d. To remove all the encroachments made by the respondent for making parking etc. and to keep the same as per plan i.e. greenery/park.
- e. To refund the amount for giving less carpet area.
- f. To provide NOC and get the sale deed executed as per RERA Act.
- g. To provide club/swimming pool etc. alongwith all facilities as per promise made in brochure.
- h. To provide all other facilities i.e provision of DTH, Broadband, Intercom Facility, approach from Highway.
- i. To pay an amount of Rs. 1,00,000/- as litigation expenses.

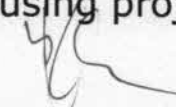
3. Upon notice, respondent appeared through authorized representative and filed written reply by taking preliminary objections, that the present complaint is barred by limitation and the same is liable to be dismissed. It is also



submitted that the present complaint is not maintainable as the housing project in question was already complete and the competent authority had already granted partial completion certificate to the said Housing Project. In view of the provisions of section 2(s) & (t) of the Act and Rule 2(g) of the Rules, 2017, provisions of the Act are only applicable on the ongoing project i.e the project under construction. The flats in this housing project, were sold before the commencement of the Act and the construction took place as per sanction granted by the concerned planning Authority. In the present case, the project work has been completed and the buildings in the project have been occupied by the allottees since 2014-15. Thus, it cannot be treated as ongoing project, as per the provisions of the Act and as such, this Bench has got no jurisdiction to hear this case. Further, it is averred that the present complaint is not maintainable because the possession of flat was taken by the complainant in June, 2016. At that time "The Real Estate (Regulation and Development) Act, 2016" was not enforced in Punjab, so this Act does not apply to the project in question. Moreover this Act, 2016 has prospective effect and the same is not applicable in retrospective manner. The proceedings commenced under the Act against the respondent are clear cut violation of the Article 20(1) of the Constitution of India. It is further submitted that prior to



June 2016, relationship between the parties to this case, was governed by the terms of their contract. Further, it is also averred that present complaint is not maintainable in the eyes of law, not having been filed in the proper form. In view of Proviso of Section 18(1) of the Act, Adjudicating Officer is not competent to entertain, try and decide the present complaint. That the complainant having indulged into "Supresso Veri" and "Suggestio Falsi" has not approached the Adjudicating Officer with clean hands and as such, complainant is not entitled for any relief and the present complaint deserves to be dismissed on this ground alone. Further, it is submitted that the present complaint has been filed by the complainant with malafide intention and bad motive to get undue advantage against respondent. On merits, it is averred that flat in question was booked for Rs.54,50,000/- under Payment Plan "B". In accordance with the said payment plan, complainant was required to make payment of the flat alongwith taxes within 410 days from the date of its booking. But he failed to adhere to the terms of payment plan and he paid Rs.56,43,405/-. There was no delay in delivery of possession and as and when complainant cleared his dues, respondent handed over possession of the flat to him. Further, it is also submitted that flat/housing project has been constructed as per sanctioned specifications/layout plan. The housing project in question, is

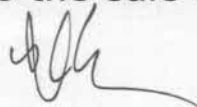


covered with gated society, which has been protected by 24x7 professional security guards and project is also well connected to the approach road. Further, it is averred that the respondent has provided all the amenities as promised, with better quality of construction material. The club house facility is also available in the housing project and the same can be used after paying the usage charges. Further, it is averred that respondent delivered the flat alongwith fitted geysers and ACs in all rooms. It is submitted that flat in question is 3BHK, which consists of 3 bedrooms and one drawing room, as such, there was only requirement of 4 ACs and question of providing 5 ACs in 3BHK flat, does not arise at all. Further, it is averred that the respondent applied completion certificate of housing project with MC, Zirakpur which issued partial completion certificate dated 08.12.2016 & 12.03.2018 to this housing project. Moreover, the PAPRA Act provides that if builder fails to get completion certificate, then the allottee itself can obtain the said certificate from concerned authority. Further, it is submitted that in view of the terms and conditions of the allotment of flat, it was the duty of complainant to get executed the agreement to sell within 30 days from the date of allotment, but he also failed to execute the said agreement, by submitting the required documents and stamp duty. The respondent has not violated any provision of PAPRA Act, 1995. The complainant did not



intentionally produce the complete copy of allotment letter in order to conceal the date of delivery of possession. That respondent did not force the complainant to make payment without signing the agreement to sell. It is also submitted that flat in question is having super area of 1852 square feet and covered area of 1440 square feet and not 1247.90, as claimed by the complainant. There is no shortfall of area in allotted flat as claimed by complainant. The respondent received legal notice from complainant on 23.03.2017 which was duly replied vide reply dated 10.04.2017.

- a. That respondent is not liable to pay the amount of Rs.4,98,000/- in accordance to valuation report as same is false and fabricated document.
- b. That the respondent is also not liable to refund of Rs.18,51,566/- to complainant as there is no shortfall of area of 604 square feet of flat in dispute.
- c. That respondent is also not liable to pay compensation of Rs.10,00,000/-to the complainant as he has not caused harassment, mental agony to the complainant.
- d. That respondent is not liable to remove any encroachment on road, as no part of the project has been encroached by the respondent.
- e. Further, respondent has never refused to give NOC to the complainant and to execute the sale deed of flat in favour of the complainant.



- f. That respondent is also not liable to pay any litigation expenses of Rs.1,00,000/- to the complainant, as claimed.

After denying all other allegations and claim of the complainant, a prayer has been made for dismissal of the present complaint.

4. Rejoinder to the written reply was filed by the complainant controverting the pleadings of written reply of respondent and reiterating the contents of his complaint.

5. Violations and contraventions contained in the complaint were put to the representative for the respondent. He totally denied all of them, including allegations of the complainant. Thereafter, the complaint was proceeded for further enquiry.

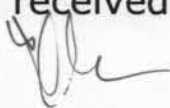
6. I have heard the representatives of the parties, who addressed the arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

Perusal of the record of the complaint shows that initially the present complaint was filed by the complainant, seeking refund on the ground of less area of the flat, amounts for not providing the promised facilities, interest, compensation including litigation expenses etc. Our Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 23021,**



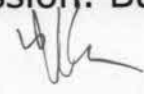
titled as M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Others etc. alongwith connected appeals, vide order dated 11.11.2021, while interpreting the various Sections, scope and scheme of the RERA Act, had held that the jurisdiction to dispose of cases pertaining to Refund of Amount and Interest on Refund Amount, Penalty and Interest thereon etc., lies with the Regulatory Authority under the Act, whereas Adjudicating Officer has the only power to deal with the cases seeking relief of compensation and interest thereon, under Sections 12,14,18 & 19. Accordingly, the present case was segregated and one set of paper book of the present complaint was sent to the Hon'ble Authority for deciding the claim of refund, interest etc., whereas the present case was kept with this Bench for deciding the relief of compensation etc. The case sent to the Hon'ble Authority was disposed of vide order dated 07.06.2022, copy of which is available on the record of this complaint. Admittedly, facts of the cases i.e the case in hand and the case decided by the Hon'ble Authority, are the same and parties are also the same.

There is nothing on record to suggest that the said order dated 07.06.2022 has been challenged by any of the parties, so meaning thereby, it has become final and parties are bound by the findings of this order. It was held in the said order that the respondent had received PCC/OC with



regard to the tower in question on 08.12.2016 and another PCC/OC was issued on 12.03.2018. That the complainant had taken possession prior to the commencement of the Act. It was specifically mentioned that the first PCC was granted on 08.02.2016, which is prior to the commencement of the Act i.e 01.05.2017. It was further held that although there was delay in handing over the possession, yet the complainant took possession after clearing all pending dues, as well as payment of delay charges. The respondent had received the PCC/OC prior to handing over the possession. Thus, the offer and handing over of possession was valid. It was also held that the project was granted partial completion certificate on 08.12.2016 and 12.03.2018, which itself implies that all required facilities, as per the approved layout plan, had been completed and verified by the competent authority. So complaint of the present complainant, alongwith other complaints was dismissed by the Hon'ble Authority vide order dated 07.06.2022.

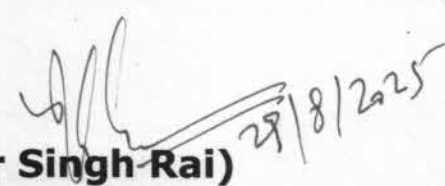
It is crystal clear from the order dated 07.06.2022 passed by the Hon'ble Authority that possession of the flat was delivered to the complainant in the month of April, 2015. However, the respondent has specifically stated that the possession was delivered to the complainant in the Month of June, 2016. But the complainant is silent with regard to the date of delivery of possession. But one thing is



certain that possession was delivered to the complainant by respondent, much prior to the date of implementation of the Act, in Punjab i.e 01.05.2017. In view of the provisions of Section 2(s) & (t) of the Act and Rules 2 (g) & (h) of the Rules, provisions of the Act are only applicable to the ongoing project i.e the project under construction. Keeping in view all these facts and circumstances, project of the respondent cannot be termed as ongoing project, under the Act. So provisions of the Act are not attracted in this case and remedy of the claimant with regard to his relief does not lie before this Bench. So this complaint deserves dismissal.

7. As a result of my above discussion, complaint of the complainant, stands dismissed and disposed of, with no order as to costs, on the ground that this Bench has no jurisdiction to decide the same. A copy of this order be sent to both the parties, free of cost, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:29.08.2025


(Rajinder Singh Rai)
Adjudicating Officer,
RERA, Punjab.